

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOSE VELEZ,

Plaintiff, **ANSWER TO THE
AMENDED COMPLAINT**

- against -

NYPD POLICE OFFICER MICHAEL O'BRIEN, Shield No. 22886 of the 9th Precinct, NYPD POLICE OFFICER PAUL JURGENS, Shield No. 23820, and JOHN DOE POLICE OFFICERS 1-5,

15-cv-7441 (VEC)

JURY TRIAL DEMANDED

Defendants.

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Defendant Paul Jurgens, by his attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for his answer to the Complaint, respectfully allege, upon information and belief, as follows:

AS TO "JURISDICTION AND VENUE":

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports bring this action as stated.
2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiff purports to invoke this Court's jurisdiction as stated.
3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiff purports to base venue as stated.

AS TO "JURY DEMAND":

4. The Jury Demand is not an averment of fact to which a response is required.

AS TO "PARTIES":

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "5" of the complaint.

6. Denies the allegations set forth in paragraph "6" of the complaint, except states that the City is a municipal corporation organized and existing under the laws of the State of New York.

7. Denies the allegations set forth in paragraph "7" of the complaint, except states that the City is a municipal corporation organized and existing under the laws of the State of New York, and maintains a Police Department consistent with all applicable rules and laws, and respectfully refers the Court to the New York City Charter and the Administrative Code for a recitation of the relationship between the City and the police department.

8. Denies the allegations set forth in paragraph "8" of the complaint, except states that Michael O'Brian and Paul Jurgens were employed by the City as police officers.

9. States that the allegations set forth in paragraph "9" of the complaint are legal conclusions requiring no response; to the extent a response may be required, denies such allegations.

10. Denies the allegations set forth in paragraph "10" of the complaint.

AS TO "STATEMENT OF FACTS":

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the complaint, except admit that plaintiff was drinking, lost control of his vehicle, and hit several parked vehicles.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint, except admits that the airbag in plaintiff's vehicle had deployed.

13. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "13" of the complaint, except admits that O'Brian and Jurgens arrived at the scene.

14. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "14" of the complaint, except admits that Plaintiff was unsteady and swaying.

15. Denies the allegations set forth in paragraph "15" of the complaint.

16. Denies the allegations set forth in paragraph "16" of the complaint.

17. Denies the allegations set forth in paragraph "17" of the complaint.

18. Denies the allegations set forth in paragraph "18" of the complaint.

19. Denies the allegations set forth in paragraph "19" of the complaint.

20. Denies the allegations set forth in paragraph "20" of the complaint.

21. Denies the allegations set forth in paragraph "21" of the complaint.

AS TO "CLAIM":

22. In response to paragraph "22" of the complaint, repeats and realleges each of the foregoing responses as though fully set forth herein.

23. Denies the allegations set forth in paragraph "23" of the complaint.

24. Denies the allegations set forth in paragraph "24" of the complaint.

25. Denies the allegations set forth in paragraph "25" of the complaint.

26. Denies the allegations set forth in paragraph "26" of the complaint.

AS TO "PRAYER FOR RELIEF":

27. The "wherefore" clause and its subparts do not contain averments of fact to which a response is required.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

1. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

2. Any injury alleged to have been sustained resulted from Plaintiff's own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of defendants.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

3. Defendant has not violated any rights, privileges, or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor has Defendant violated any acts of Congress providing for the protection of civil rights.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

4. Defendant Jurgens has not violated any clearly established constitutional or statutory rights of which a reasonable person would have known and therefore are entitled to qualified immunity.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

5. Punitive damages cannot be received against any defendant, and, if available, the amount of such damages shall be limited by applicable state and federal law, including due process and other provisions of law.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

6. Plaintiff's action is barred, in whole or in part, by the doctrine of res judicata and collateral estoppel.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

7. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches, waiver, and estoppel.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

8. Plaintiff's claims are barred, in whole or in part, by his own contributory and comparative negligence and by assumption of risk.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

9. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

10. To the extent that one or more defendants used any force, it was reasonable, justified, and necessary to accomplish Defendants' official duties and to protect their own physical safety and the safety of others.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

11. Plaintiff provoked any incident.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

12. Plaintiff may have failed to mitigate damages.

WHEREFORE, defendant Paul Jurgens requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
July 11, 2016

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street,
New York, New York 10007
(212) 356-2105

By:

/s/

Matthew Stein
Assistant Corporation Counsel

cc: BY ECF
Ryan Lozar, Esq.
Law Office of Ryan Lozar
305 Broadway, 9th Floor
New York, NY, 10007

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23820, and JOHN DOE POLICE OFFICERS 1-5,

Defendants.

ANSWER TO THE AMENDED COMPLAINT

ZACHARY W. CARTER

*Corporation Counsel of the City of New York
Attorney for Defendant O'Brian
100 Church Street
New York, N.Y. 10007*

*Of Counsel:
Tel: 212-356-2105
Law Manager No. 2015-050002*

Due and timely service is hereby admitted.

New York, N.Y. July 11, 2016

..... Matthew E. Stein Esq.

Attorney for Defendants.....